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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,248	11/11/2003	John F. Westerhold	WEST-102	6877
23410	7590	02/24/2006	EXAMINER	
Vista IP Law Group LLP 2040 MAIN STREET, 9TH FLOOR IRVINE, CA 92614			BRADEN, SHAWN M	
			ART UNIT	PAPER NUMBER
			3727	
DATE MAILED: 02/24/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

SOP

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/706,248	WESTERHOLD, JOHN F.
	Examiner	Art Unit
	Shawn M. Braden	3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-7 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-17 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 11 November 2003 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2/14/2005
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-17, are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1-16 of U.S. Patent No. 6,662,959.

Although the conflicting claims are not identical, they are not patentably distinct from each other because Claims 1-16 of patent # 6,662,959 contain every element of claims 1-17 of the instant application and as such anticipate claims 1-5 of the instant application.

Regarding claims 6-8, U.S. Patent No. 6,662,959 discloses the invention substantially as claimed. However U.S. Patent No. 6,662,959 does not disclose specifically where he uses plastic, glass and metal.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to mix different combinations of plastic, metal and glass component variations to the container of U.S. Patent No. 6,662,959 for the purpose making the parts of a container able to be suited for the environment that they will be subject to, example glass for its longevity, plastic for cost savings. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

3. Furthermore, claims 1-16 of patent #6,662,959 contain the elements implied in claims 9-17 of the instant application. Therefore, the method steps of claims 9-17 in the instant application are met by claims 1-16 of patent # 6,662,959.

4. Claims 1-17 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-21 of copending Application No. 11/011,631. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims of copending Application No. 11/011,631 contain every element of claims 1-17 of the instant application and as such anticipate claims 1-17 of the instant application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Drawings***

5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claim 5. Therefore, the "said second sidewall has a thickened band in the area of the second threaded connection means,"

must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

#### ***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claims 5,13 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter

which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification fails to provide an adequate written description of "A thickened band in the area of the second threaded connection".

### **Claim Objections**

8. Claims 10-13 are objected to because of the following informalities: "The bottle of claim 9" should be changed to "the method of converting a bottle of claim 9", in order to maintain consistent preamble terminology. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1,2,4,5,9-12,17 are rejected under 35 U.S.C. 102(b) as being anticipated by Baum.

With respect to claim 1,9, Baum shows,

- a) a base (16) having an elongated stem (17),
- b) a bottom element (4) having a first threaded (13) connection means,
- c) a container portion (1) having a second sidewall defining a top portion

and a bottom portion, said top portion of said second sidewall having a second threaded

connection means (12) which mates with first threaded connection means (13), said bottom portion having a neck portion (9), said neck portion (9) having an opening (fig. 1)

d) a closure (5) which mates with said neck portion (9) to form a fluid tight seal: and wherein said bottom element (4) is connected to said container portion (1) by screwing said first threaded connection (13) means onto said second connection (12) means, said bottom element (4) and said container portion (1) thereby forming a sealed reservoir with may be filled with a fluid, and stem (17) may be affixed to said container portion (1).

Also Baum shows attaching said elongated stem (17) to said neck portion (9) and removing said bottom element (4) from said container portion (1) by unscrewing said first threaded connection (13) from second threaded connection (12).

With respect to claims 2,10, Baum shows stem (17) may be affixed to said container portion (1) via attachment to said closure (5) (fig. 2).

With respect to claims 4,11,12, Baum shows closure (5) is a screw cap (fig. 1). Examiner considers screw cap to have the same structure and recitation as an interference fit.

With respect to claims 5,13, Baum shows a container portion (1) further comprises a lip top end (12).

With respect to claim 17, Baum shows,

a) a base (16) having an elongated stem (17), a bottom element (4) having a recess (14) and a first sidewall (13) extending from said bottom (4) having a first threaded connection (13) means.

b) inserting said base (16) into said recess (14) of said bottom (4)

c) mating said bottom element (4) to a container portion (1) (fig. 1), said container portion (1) having a second sidewall defining a top portion and a bottom portion, said top portion of said second sidewall having a second threaded connection means (12) which mates with first threaded connection means (13), said bottom portion having a neck portion (9), said neck portion (9) having an opening (fig. 1)

d) a closure (5) which mates with said neck portion (9) to form a fluid tight seal.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claim 3 rejected under 35 U.S.C. 103(a) as being unpatentable over Baum (USPN 640,860) in view of Roche (U. S. PUB No. 2001/0022304 A1)

With respect to claim 3, Baum discloses the invention substantially as claimed. However Baum does not disclose a stem snap-fitted onto the closure.

Roche teaches "suitably, the lid may be attached to the container to provide a base for the container when in use as a drinking vessel by means of a snap fit, interference fit or a twist fit attachment (pg. 3 paragraph 49), in the analogous art of

containers for the purpose of attaching the stem of a container to the main body of the container.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add a snap-fit connection to the container of Baum in order to hold the stem onto the neck.

13. Claims 6-8,14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baum (USPN 640,860) in view of Vincent (USPN 6,615,883)

Baum discloses the invention substantially as claimed. However Baum does not disclose specifically where he uses plastic, glass and metal.

Vincent, teaches "the portions of the receiving container other than the splines may be constructed of any material known in the packaging art, such as plastics, metals, glass and the like" (col. 5 ln 50), in the analogous art of containers for the purpose making the parts of a container able to be suited for the environment that they will be subject to, example glass for its longevity, plastic for cost savings.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to mix different combinations of plastic, metal and glass component variations to the container of Baum in the analogous art of containers for the purpose making the parts of a container able to be suited for the environment that they will be subject to. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shawn M. Braden whose telephone number is (571)272-8026. The examiner can normally be reached on Mon-Thurs 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SMB



JES F. PASCUA  
PRIMARY EXAMINER